



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor
Anu Natarajan, Vice Mayor
Bob Wieckowski
Bill Harrison
Suzanne Lee Chan

City Staff

Fred Diaz, City Manager
Harvey E. Levine, City Attorney
Melissa Stevenson Dile, Deputy City Manager

Dawn G. Abrahamson, City Clerk
Harriet Commons, Finance Director
Marilyn Crane, Information Technology Svcs. Dir.
Daren Fields, Economic Dev. Director
Mary Kaye Fisher, Interim Human Resources Dir.
Annabell Holland, Parks & Recreation Dir.
Norm Hughes, City Engineer
Jill Keimach, Community Dev. Director
Bruce Martin, Fire Chief
Jim Pierson, Transportation & Ops Director
Jeff Schwob, Planning Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

**NOTICE AND AGENDA OF SPECIAL MEETING
CLOSED SESSION
CITY COUNCIL OF THE CITY OF FREMONT
AND
REDEVELOPMENT AGENCY**

DATE: Tuesday, October 27, 2009

TIME: 5:30 p.m.

LOCATION: Fremont Room, 3300 Capitol Avenue, Fremont

The City/Agency will convene a special meeting. It is anticipated the City/Agency will immediately adjourn the meeting to a closed session for granting authority to its real property negotiators regarding price and terms of payment and possible initiation of litigation against the City in one matter, as follows:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS: This Closed Session is authorized by Government Code Section 54956.8 at the time and place stated above to confer with and grant authority to its real property negotiators regarding:

APN# 501-0536-017-02 and 501-0536-018-02, approximately 27,499 sq. ft., located at 37405-37415 Fremont Boulevard and 4036 Beloveria Court.

The Brown Act requires the negotiators (even when not attending the meeting) to be listed in this notice. Those negotiators are:

For the Agency—(which will be represented at the meeting); Elisa Tierney, Redevelopment Director; Randy Sabado, Real Property Manager and Harvey Levine, Agency Attorney

CONFERENCE WITH REAL PROPERTY NEGOTIATORS: This Closed Session is authorized by Government Code Section 54956.8 at the time and place stated above to confer with and grant authority to its real property negotiators regarding:

Owner	Street Address	APN	Total (s.f.)
Rene Camacho and Sonia Camacho	37364 Joseph	501 053606200	450
Welqin Shen and Bei Zeng	37376 Joseph	501 053606100	450

Raymond J. Ayala	37428 Joseph	501 053605900	441
Victor G. Hernandez and Christine Hernandez, as Trustees of the Victor G. Hernandez and Christine Hernandez Revocable Living Trust Established by Declaration of Trust dated July 31, 1990	37436 Joseph	501 053605800	459
Donald J. Dean	37444 Joseph	501 053605700	450
Tyson Tai-Sun Shieh and Grace L. Shieh	37452 Joseph	501 053605600	450
George G. Rogers	37460 Joseph	501 053605500	450
William Harvey Olson, Trustee of The William Harvey Olson Trust dated Jan. 20, 2006	37468 Joseph	501 053605400	450
Esam Elashmawi and Passent Hamdy	37474 Joseph	501 053605300	450
James H. Carvalho	37482 Joseph	501 053605200	450

The Brown Act requires the negotiators (even when not attending the meeting) to be listed in this notice. Those negotiators are:

For the City—(which will be represented at the meeting); Elisa Tierney, Redevelopment Director; Randy Sabado, Real Property Manager and Harvey Levine, City Attorney

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

This Closed Session is authorized by subdivision (C) of Section 54956.9 of the Government Code and will pertain to possible initiation of litigation against the City in one matter.

This Special Meeting is being called by Mayor/Chairman Wasserman.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
OCTOBER 27, 2009
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – for the Regular Meeting of October 13, 2009*
- 2.3 *HAZARDOUS MATERIALS CERTIFIED UNIFIED PROGRAM (CUPA) UPDATE
Inform the Council that the Fremont Fire Department, as the Local CUPA, will Begin Collecting the California Environmental Protection Agency (CalEPA) Electronic Reporting Surcharge and Remitting it Directly to CalEPA and Further, the City will not be Adopting a Fee for Implementation of the Aboveground Petroleum Storage Act (APSA) in 2010*

Contact Person:

<i>Name:</i>	<i>Amiel Thurston</i>	<i>Jay Swardenski</i>
<i>Title:</i>	<i>Deputy Fire Marshal</i>	<i>Fire Marshal</i>
<i>Dept.:</i>	<i>Fire</i>	<i>Fire</i>
<i>Phone:</i>	<i>510-494-4213</i>	<i>510-494-4222</i>
<i>E-Mail:</i>	<i>athurston@fremont.gov</i>	<i>jswardenski@fremont.gov</i>

RECOMMENDATION: Receive report.

2.4 **PROPOSITION 1A SECURITIZATION PROGRAM**

Consider the City's Participation in the Proposition 1A Securitization Program, and Adoption of a Resolution Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the Sale of the City's Proposition 1A Property Tax Receivable from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith

Contact Person:

<i>Name:</i>	<i>Don Dorman</i>	<i>Harriet Commons</i>
<i>Title:</i>	<i>Revenue & Treasury Manager</i>	<i>Director</i>
<i>Dept.:</i>	<i>Finance</i>	<i>Finance</i>
<i>Phone:</i>	<i>510-494-4616</i>	<i>510-284-4010</i>
<i>E-Mail:</i>	<i>ddorman@fremont.gov</i>	<i>hcommons@fremont.gov</i>

RECOMMENDATION: Approve the City's participation in the CSCDA Proposition 1A Securitization Program and adopt the proposed Proposition 1A Sale Resolution and the proposed Purchase and Sale Agreement.

2.5 **FREMONT ASSOCIATION OF CITY EMPLOYEES (FACE) MOU**

Consideration of a Resolution Approving a New Memorandum of Understanding (2009-2011) with the Fremont Association of City Employees (FACE)

Contact Person:

<i>Name:</i>	<i>Mary Kaye Fisher</i>	<i>Melissa Stevenson Dile</i>
<i>Title:</i>	<i>Interim Director</i>	<i>Deputy City Manager</i>
<i>Dept.:</i>	<i>Human Resources Director</i>	<i>City Manager's Office</i>
<i>Phone:</i>	<i>510-494-4664</i>	<i>510-284-4005</i>
<i>E-Mail:</i>	<i>mkfisher@fremont.gov</i>	<i>mdile@fremont.gov</i>

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) between the City and the Fremont Association of City Employees that commences July 1, 2009 and expires June 30, 2011, and provides for the benefits outlined above, and authorize the City Manager or designee to execute and implement the terms and conditions of the MOU.

2.6 **ALAMEDA COUNTY LOCAL AGENCY FORMATION COMMISSION (LAFCO)**

APPLICATION BY BART TO ANNEX CITY PROPERTY INTO ALAMEDA COUNTY WATER DISTRICT (ACWD) SERVICE AREA

Authorization to Sign BART's Application to LAFCO to Annex the BART Warm Springs Station and Adjacent City Right-of-Way into ACWD's Service Area as Part of the Warm Springs BART Extension Project

Contact Person:

<i>Name:</i>	<i>Jim Pierson</i>
<i>Title:</i>	<i>Director</i>
<i>Dept.:</i>	<i>Transportation & Operations</i>
<i>Phone:</i>	<i>510-494-4722</i>
<i>E-Mail:</i>	<i>jpierson@fremont.gov</i>

RECOMMENDATION: Authorize the City Manager or his designee to sign BART's Annexation Application to include two areas of City right-of-way in ACWD's service area as described herein.

2.7 ALAMEDA COUNTY AREA AGENCY ON AGING CONTRACTS

Authorize the City Manager to Execute FY 2009/10 Contracts with the Alameda County Area Agency on Aging for Case Management, Family Caregiver Support, the Senior Center and the Multi-Purpose Senior Services Program (MSSP); and Appropriate Additional Funds

Contact Person:

<i>Name:</i>	<i>Karen Grimsich</i>	<i>Suzanne Shenfil</i>
<i>Title:</i>	<i>Administrator</i>	<i>Director</i>
<i>Dept.:</i>	<i>Human Services</i>	<i>Human Services</i>
<i>Phone:</i>	<i>510-574-2062</i>	<i>510- 574-2051</i>
<i>E-Mail:</i>	<i>kgrimsich@fremont.gov</i>	<i>sshenfil@fremont.gov</i>

RECOMMENDATIONS:

- 1. Authorize the City Manager or designee to execute contracts with the Alameda County Area Agency on Aging totaling \$163,565, including \$30,979 for Case Management, \$69,446 for Caregiver Support, \$53,140 for the MSSP program, and \$10,000 for the Senior Center.*
- 2. Appropriate \$1,240 to the Older Americans Grant Fund 106 and \$867 to the Area Agency on Aging Grant Fund 173.*

2.8 INTRODUCTION OF CONFORMING AMENDMENTS AND MID-CYCLE CLEANUP TO THE 2007 CALIFORNIA FIRE CODE

Continued Public Hearing (Published Notice) to Introduce an Ordinance Making Conforming Amendments and Mid-Cycle Cleanup to the 2007 California Fire Code and Adopting by Reference the California State Fire Marshal's Guidelines for the Installation of Solar Arrays

Contact Person:

<i>Name:</i>	<i>Amiel Thurston</i>	<i>Jay Swardenski</i>
<i>Title:</i>	<i>Deputy Fire Marshal</i>	<i>Fire Marshal</i>
<i>Dept.:</i>	<i>Fire</i>	<i>Fire</i>
<i>Phone:</i>	<i>510-494-4213</i>	<i>510-494-4222</i>
<i>E-Mail:</i>	<i>athurston@fremont.gov</i>	<i>jswardenski@fremont.gov</i>

RECOMMENDATIONS:

- 1. Hold public hearing.*
- 2. Waive full reading and introduce an ordinance amending the 2007 California Fire Code, as set forth herein and finding the amendments reasonably necessary due to local conditions.*
- 3. Adopt a motion directing staff to prepare a summary of the ordinance and the City Clerk to post and publish the summary in accordance with Government Code Section 36933(c)(1).*

3. CEREMONIAL ITEMS

- 3.1 Resolution: Honoring Detective Daniel Clark for Twenty Five Years of Service

4. PUBLIC COMMUNICATIONS

- 4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – None.

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS

5.1 PARTICIPATION IN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM (SCIP) OFFERED BY THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

Hold Public Hearing (Published Notice) and Adopt Resolution Authorizing City of Fremont Participation in the Statewide Community Infrastructure Program (SCIP) for Financing of Development Impact Fees

Contact Person:

Name:	Don Dorman	Harriet Commons
Title:	Revenue & Treasury Manager	Director
Dept.:	Finance	Finance
Phone:	510-494-4616	510-284-4010
E-Mail:	ddorman@fremont.gov	hcommons@fremont.gov

RECOMMENDATION:

1. Hold a public hearing.
2. Adopt a resolution authorizing the City of Fremont's participation in the Statewide Community Infrastructure Program (SCIP) offered by the California Statewide Communities Development Authority (CSCDA).

6. REPORT FROM CITY ATTORNEY

6.1 Report Out from Closed Session of Any Final Action

6.2 ORDINANCE REGARDING SMOKING IN OUTDOOR DINING AREAS Introduce an Ordinance Amending Fremont Municipal Code Title IV, Chapter 6 Regarding Smoking in Outdoor Dining Areas

Contact Person:

Name:	Prasanna W. Rasiah	Harvey E. Levine
Title:	Deputy City Attorney	City Attorney
Dept.:	City Attorney	City Attorney
Phone:	510-284-4030	510-284-4030
E-Mail:	prasiah@fremont.gov	hlevine@fremont.gov

RECOMMENDATION: Introduce an ordinance amending Fremont Municipal Code Title IV, Chapter 6, Sections 4-6102 and 4-6104 regarding smoking in outdoor dining areas.

7. OTHER BUSINESS

7.1 AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING UPDATE Update on Funding Received in Fremont Under the American Recovery and Reinvestment Act of 2009

Contact Person:

Name:	Maya Williams	Melissa Stevenson Dile
Title:	Management Analyst	Deputy City Manager
Dept.:	City Manager's Office	City Manager's Office
Phone:	510-284-4013	510-284-4005
E-Mail:	mwilliams@fremont.gov	mdile@fremont.gov

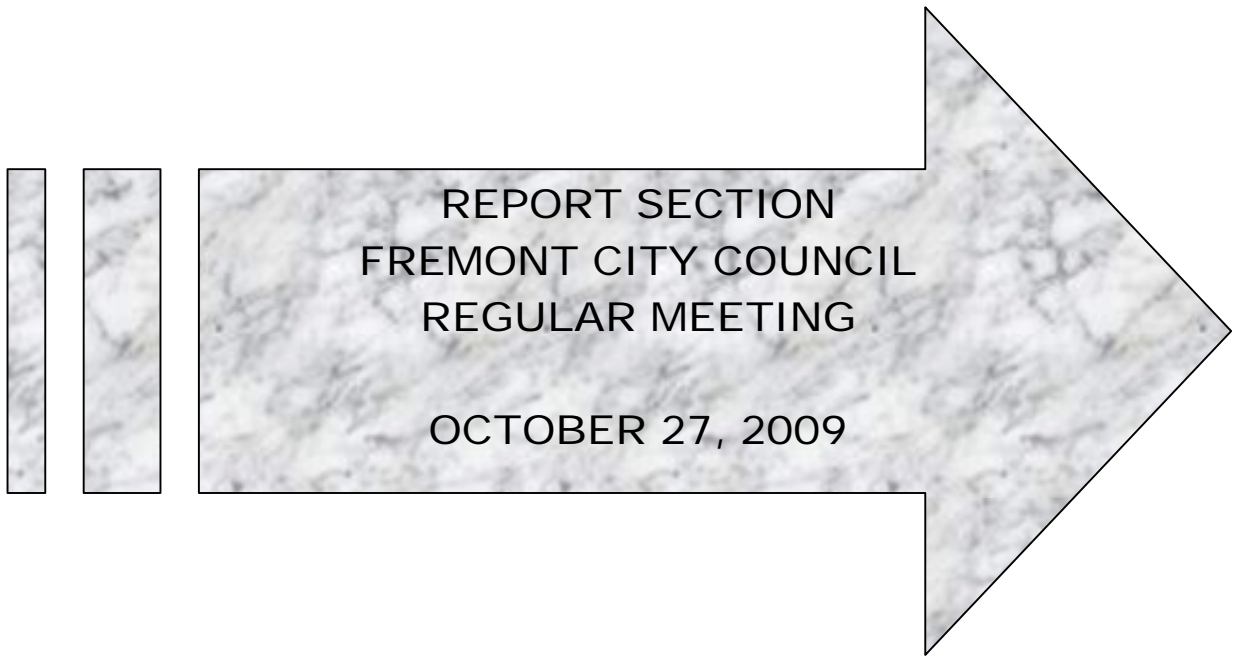
RECOMMENDATION: Receive report on the American Recovery and Reinvestment Act of 2009.

8. COUNCIL COMMUNICATIONS

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

9. ADJOURNMENT



REPORT SECTION
FREMONT CITY COUNCIL
REGULAR MEETING

OCTOBER 27, 2009

***2.3 HAZARDOUS MATERIALS CERTIFIED UNIFIED PROGRAM (CUPA) UPDATE**
Inform the Council that the Fremont Fire Department, as the Local CUPA, will Begin Collecting the California Environmental Protection Agency (CalEPA) Electronic Reporting Surcharge and Remitting it Directly to CalEPA and Further, the City will not be Adopting a Fee for Implementation of the Aboveground Petroleum Storage Act (APSA) in 2010

Contact Person:

Name:	Amiel Thurston	Jay Swardenski
Title:	Deputy Fire Marshal	Fire Marshal
Dept.:	Fire	Fire
Phone:	510-494-4213	510-494-4222
E-Mail:	athurston@fremont.gov	jswardenski@fremont.gov

Executive Summary: The purpose of this report is to update the City Council regarding the ongoing implementation of the Fire Department's CUPA Program. Two items are presented for Council review:

1. Collection of CalEPA's Electronic Reporting Surcharge, and
2. Addition of the Aboveground Petroleum Storage Act (APSA) as an element of the Fire Department's CUPA program.

No action is required by the City Council.

BACKGROUND: In 2008, a new law (AB2286) took effect that established the California Environmental Reporting System (CERS) and requires all regulated businesses and all local government agencies, called Certified Unified Program Agencies (CUPA), to use the Internet to file required Unified Program information that is now filed by paper forms by January 1, 2013. This includes facility data regarding hazardous material regulatory activity, chemical inventories, underground and aboveground storage tanks, and hazardous waste generation. It also includes CUPA data such as inspections, violations, and enforcement actions. CalEPA established a \$25 surcharge to fund this transition. This means that the minimum State surcharge will increase from \$24 per year to \$49 per year. Staff intends to add this electronic surcharge to the next three annual billing statements. The additional surcharge amount will be collected by Fremont Fire and sent to CalEPA as in the past.

Secondly, the Fire Department intends to continue using start up grant funding from the California Environmental Protection Agency (CalEPA) to implement the Aboveground Petroleum Storage Act (APSA) Program element. As the Council may remember, the APSA Program responsibilities were transferred from State Water Resources Control Board (SWRCB) to local CUPAs via Assembly Bill 1130 (Laird) and became effective January 1, 2008. The grant provided start-up funding for the administrative, inspection and educational portions of the APSA program and will cover the incremental cost of the program from through January 1, 2010.

Prior to January 1, 2010, the Fremont Fire Department Hazardous Materials Division, as the CUPA for Fremont, needed to return to the City Council with a recommendation to adopt a program-specific fee at a level sufficient to cover the necessary and reasonable costs incurred by the City in administering the APSA Program. While staff may return in the future, should it be found that the APSA program element

requires a distinct fee to cover its costs, we are for now, not proposing to add a fee for this program element. Staff believe the program element can be implemented with the existing staff and fee structure associated with the CUPA program.

FISCAL IMPACT: Each regulated business will see a \$25 increase in the annual CUPA invoice. The City will remit this amount to the State.

ENVIRONMENTAL REVIEW: Not required.

ENCLOSURES:

- [California Electronic Reporting System \(CERS\) Unified Program Electronic Reporting Surcharge Fact Sheet](#)
- [California Environmental Protection Agency Unified Program Fact Sheet for the Aboveground Petroleum Storage Act \(APSA\)](#)

RECOMMENDATION: Receive report.

***2.4 PROPOSITION 1A SECURITIZATION PROGRAM**

Consider the City's Participation in the Proposition 1A Securitization Program, and Adoption of a Resolution Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the Sale of the City's Proposition 1A Property Tax Receivable from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith

Contact Person:

Name:	Don Dorman	Harriet Commons
Title:	Revenue & Treasury Manager	Director
Dept.:	Finance	Finance
Phone:	510-494-4616	510-284-4010
E-Mail:	ddorman@fremont.gov	hcommons@fremont.gov

Executive Summary: Proposition 1A was passed by California voters in 2004 to ensure local property tax and sales tax revenues remain with local government. Its provisions can only be suspended if the Governor declares a "severe fiscal hardship" and two-thirds of the Legislature concur by enacting urgency legislation. That emergency suspension occurred as part of the FY 2009/10 adopted State budget package on July 28, 2009. As a result, in FY 2009/10, the State will borrow 8% of the amount of property tax revenue apportioned to cities, counties, and special districts. For Fremont, that amount is \$5,645,157. The State is required to repay this loan with interest by June 30, 2013, at a simple interest rate of 2.0%.

Recognizing the potential hardship this borrowing creates for many cities, counties, and special districts, the California legislature provided public agencies with an option to join with other California public agencies by using the California Statewide Communities Development Authority to issue tax-exempt debt, the proceeds of which will replace the lost property tax revenues this year. The State will pay all costs of issuance and all the principal and interest for these bonds, and the State will use its own credit rating. As of October 14, 2009, nearly 1,200 public entities have enrolled in the CSCDA program, thus expressing their interest in participating in the program. (Membership in CSCDA is not required to participate in this particular program.) The securitized amounts for just cities and counties (excluding special districts) are an estimated \$1.5 billion. It is not known if all enrolled entities will ultimately securitize their Proposition 1A receivables.

Staff recommends that the City Council authorize the City of Fremont's participation in the CSCDA Proposition 1A Securitization Program so that the City will not be forced to defer any part of its fiscal year 2009/10 property tax revenues.

BACKGROUND: Proposition 1A was passed by California voters in 2004 to ensure local property tax and sales tax revenues remain with local government. This amendment to the State Constitution was intended to restore predictability and stability to local government budgets. Its provisions can only be suspended if the Governor declares a "severe fiscal hardship" and two-thirds of the Legislature concur by enacting urgency legislation.

The emergency suspension of Proposition 1A was passed by the Legislature and signed by the Governor as ABX4 14 and ABX4 15 as part of the FY 2009/10 State budget package on July 28, 2009. Clean-up legislation (SB 67) was subsequently passed to clarify specific aspects of ABX4 14 and ABX4 15. As a result of the Proposition 1A suspension, the State will borrow 8% of the amount of property tax revenue apportioned to cities, counties and special districts. For Fremont, the loan amount to the State (“Prop 1A receivable”) is \$5,645,157. The State is required to repay these obligations plus interest by June 30, 2013. The California Department of Finance has established the interest rate the State will pay on the borrowed property taxes at the simple interest rate of 2.0% per annum.

California Statewide Communities Development Authority (CSCDA or California Communities) is a joint powers authority sponsored by the California State Association of Counties (CSAC) and the League of California Cities. The member agencies of CSCDA include approximately 337 cities and all 58 counties throughout California. The City of Fremont is a member agency, and previously took advantage of a similar program offered by CSCDA in 2005 to accelerate the receipt of vehicle license fees that were the subject of State “borrowing” at that time.

DISCUSSION/ANALYSIS: The Proposition 1A Securitization Program enables local agencies to sell their respective Proposition 1A Receivables to CSCDA. Under the Securitization Program, CSCDA will purchase the Proposition 1A Receivables, issue bonds (“Prop 1A Bonds”), and provide each local agency with the cash proceeds in two equal installments, on January 15, 2010 and May 3, 2010 (to coincide with the dates on which the State will shift property tax away from local agencies). The purchase price paid to local agencies will equal 100% of the amount of the property tax reduction. All transaction costs of issuance and interest will be paid by the State of California. Participating local agencies will have no obligation on the bonds and no credit exposure to the State.

If the City sells its Proposition 1A Receivable under the Proposition 1A Securitization Program, CSCDA will pledge the City’s Proposition 1A Receivable to secure the repayment of a corresponding amount of the Prop 1A Bonds. The City’s sale of its Proposition 1A Receivable will be irrevocable. Further, bondholders will have no recourse to the City if the State does not make the Proposition 1A Repayment.

Another factor staff considered in evaluating the City’s participation in the Proposition 1A Securitization Program is the risk of the State failing to repay the loan by June 30, 2013. Although legislation (ABX4 15) was passed that directs this repayment to occur, the State continues to experience significant fiscal challenges. Participation in the Proposition 1A Securitization Program mitigates the City’s risk of non-payment by transferring that risk to the bondholders.

The benefits to the City of participation in the Proposition 1A Securitization Program are summarized, as follows:

- ***Immediate cash relief*** –The sale of the City’s Proposition 1A Receivable will provide the City with 100% of its Proposition 1A Receivable (\$5,645,157) in two equal installments, on January 15, 2010 and May 3, 2010, to coincide with the dates on which the State will be shifting property tax away from local agencies.
- ***All costs of financing borne by the State of California*** – The City will not have to pay any interest cost or costs of issuance in connection with its participation.

- **No obligation on bonds** – The City has no obligation with respect to the payment of the bonds, nor any reporting, disclosure or other compliance obligations associated with the bonds.
- **Mitigation of repayment risk** – Transfers the risk of non-payment by the State from the City to the bondholders.

In order to proceed with the City’s participation in the Proposition 1A Securitization Program, the Council must approve the Proposed Proposition 1A Receivables Sale Resolution and the Proposed Purchase and Sale Agreement. These two documents are described below.

Proposed Proposition 1A Receivables Sale Resolution: The proposed resolution, which requires a simple majority vote, accomplishes the following authorizations and approvals that are needed by CSCDA to sell the bonds:

- Authorizes the sale of the City’s Proposition 1A Receivable to CSCDA for 100% of its receivable amount;
- Approves the form, and directs the execution and delivery, of the Purchase and Sale Agreement with CSCDA and related documents;
- Authorizes and directs any Authorized Officer to send, or to cause to be sent, an irrevocable written instruction required by statute to the State Controller notifying the State of the sale of the Proposition 1A Receivable and instructing the disbursement of the Proposition 1A Receivable to the Proposition 1A Bond Trustee;
- Appoints certain City officers and officials as Authorized Officers for purposes of signing documents; and
- Authorizes miscellaneous related actions and makes certain ratifications, findings and determinations required by law.

Proposed Purchase and Sale Agreement: In addition to providing for the sale of the Proposition 1A Receivable to CSCDA, this agreement does the following:

- Contains representations and warranties of the City to assure CSCDA that the Proposition 1A Receivable has not been previously sold, is not encumbered, that no litigation or other actions are pending or threatened to disrupt the transaction, and that this is an arm’s length “true sale” of the Proposition 1A Receivable.
- Provides mechanics for payment of the Purchase Price.
- Contains other miscellaneous provisions.

Proposed Purchase and Sale Agreement Exhibits: Attached to the Proposed Purchase and Sale Agreement are several necessary exhibits that the City Council needs to authorize staff to complete and to release to Transaction Counsel (Orrick, Herrington & Sutcliffe), once they are properly completed. These exhibits and their purposes are as follows:

- (B1) **Opinion of Counsel:** This is an opinion of the City Attorney covering basic approval of the documents, litigation, and enforceability of the document against the Seller. It will be dated as of the Pricing Date of the bonds (currently expected to be November 10, 2009).

- (B2) **Bringdown Opinion:** This simply “brings down” the Opinion of Counsel to the Closing Date (currently expected to be November 19, 2009).
- (C1) **Certificate of the Clerk of the Local Agency:** A certificate of the City Clerk confirming that the resolution was duly adopted and is in full force and effect.
- (C2) **Seller Certificate:** A certification of the Seller (City) dated as of the Pricing Date confirming that the representations and warranties of the Seller are true as of the Pricing Date, confirming authority to sign, confirming due approval of the resolution and providing payment instructions.
- (C3) **Bill of Sale and Bringdown Certificate:** Certificate that brings the certifications of C2 down to the Closing Date and confirms the sale of the Proposition 1A Receivable as of the Closing Date.
- (D) **Irrevocable Instructions to the Controller:** Required in order to let the State Controller know that the Proposition 1A Receivable has been sold and directing the State to make payment of the receivable to the Trustee on behalf of the Purchaser.
- (E) **Escrow Instruction Letter:** Instructs Transaction Counsel (Orrick) to hold all documents in escrow until closing, and if closing does not occur by December 31, 2009 for any reason, to destroy all documents.

FISCAL IMPACT: By participating in the Proposition 1A Securitization Program, the City will receive its full amount of property tax in FY 2009/10, instead of loaning a portion (\$5.6 million) to the State of California, to be repaid with 2% simple interest by June 30, 2013. The interest rate on October 16, 2009, for 3-year U.S. Treasury notes was 1.51%. Although the State’s offered interest rate of 2.0% is marginally higher than that yield, all rates are definitely at the lower end of historical norms. Staff believes it is likely the City can invest at substantially higher rates soon after the actual proceeds are received. For example, during a few weeks this summer, staff was able to invest in federal government sponsored agency callable bonds that yielded 3.5%-3.75%. Another reason for the slightly higher offering yield on the State’s obligations may also relate to the absence of an organized market for the investment. Unlike the bonds the City typically buys, there is likely to be either no market or a very limited market where the City could sell the State’s receivable if it wanted to do so. This illiquidity justifies the slight premium offered by the State, but it does not reflect generosity in the interest rate.

Upon delivery of the Proposition 1A Bonds, CSCDA will make available to the City its fixed purchase price, which will equal 100% of the City’s Proposition 1A Receivable. These funds may be used for any lawful purpose of the City and are not restricted by the program.

ENCLOSURES:

- [Proposed Purchase and Sale Agreement with Exhibits](#)
- [Proposed Proposition 1A Sale Resolution](#)

RECOMMENDATION: Approve the City’s participation in the CSCDA Proposition 1A Securitization Program and adopt the proposed Proposition 1A Sale Resolution and the proposed Purchase and Sale Agreement.

***2.5 FREMONT ASSOCIATION OF CITY EMPLOYEES (FACE) MOU
Consideration of a Resolution Approving a New Memorandum of Understanding
(2009-2011) with the Fremont Association of City Employees (FACE)**

Contact Person:

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Executive Summary: In September 2009, the City completed negotiations with the Fremont Association of City Employees (FACE) for a two-year agreement. This unit has 241 members and represents a variety of administrative positions ranging from Accounting Specialists to Administrative Assistants to Zoning Technicians. The proposed MOU carries over most of the provisions of the existing MOU, with some changes: it maintains current salary levels with no Cost of Living Adjustment (COLA) during the two-year term and increases the City's contribution to the Health Benefit Allowance (HBA) for the unit effective in January 2010 and 2011, at five percent (5%) and ten percent (10%), respectively.

Primary Changes to Existing Memorandum of Understanding Provisions:

1. *No Cost of Living (COLA) Adjustments*
2. *Health Benefit Allowance (HBA):*
 - a. Effective January 1, 2010, the Health Benefit Allowance will increase from \$1,166 per month to \$1,383 per month. This amount also includes a reallocation of the dental premium from the Association sponsored plan to the City sponsored plan.
 - b. Effective January 1, 2011, the Health Benefit Allowance will increase to \$1,521 per month.
3. *Alignment of Benefits.* The current menu of benefits available to employees varies considerably by bargaining unit. The negotiations have resulted in agreement to transfer the dental insurance from the Health Care Employees/Employer Dental Trust to the City administered CAP Pool. This will allow the City's insurance broker to achieve efficiencies and cost savings through larger purchasing pools and review of utilization data.

In addition, the MOU contains minor changes to clarify administrative procedures.

FISCAL IMPACT: The costs resulting from the recommended memorandum of understanding are relatively minor and, as such, can be absorbed in the Operating Budget adopted by the Council on June 9, 2009. The provisions of the recommended memorandum of understanding are consistent with the City's sustainable budget strategy, which relies on the use of one-time resources, reduced operating expenditures, and strategic investments of City resources in order to balance the City's budget.

ENCLOSURES: [Draft Resolution](#)

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) between the City and the Fremont Association of City Employees that commences July 1, 2009 and expires June 30, 2011, and provides for the benefits outlined above, and authorize the City Manager or designee to execute and implement the terms and conditions of the MOU.

***2.6 ALAMEDA COUNTY LOCAL AGENCY FORMATION COMMISSION (LAFCO)
APPLICATION BY BART TO ANNEX CITY PROPERTY INTO ALAMEDA COUNTY
WATER DISTRICT (ACWD) SERVICE AREA**

Authorization to Sign BART's Application to LAFCO to Annex the BART Warm Springs Station and Adjacent City Right-of-Way into ACWD's Service Area as Part of the Warm Springs BART Extension Project

Contact Person:

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Executive Summary: BART is submitting an application to the Alameda County Local Agency Formation Commission (LAFCO) for the annexation of the future Warm Springs Station site into in the Alameda County Water District's (ACWD) Service Area. Enclosure A provides a map showing the proposed area for annexation. During BART's discussions with LAFCO, it was determined that two areas within the City's street right-of-way adjacent to the future station area are also not in the ACWD service area. Therefore, LAFCO is requesting BART to include those areas in the same application for annexation. To include the City's right-of-way in the application requires the City to sign BART's application. Council is requested to authorize the City Manager or his designee to sign BART's application to LAFCO.

BACKGROUND: During the environmental analysis of the Warm Springs Extension (WSX) Project, BART discovered that the parcel where the future Warm Springs Station will be located is not within ACWD's service area because the station area property had not previously required ACWD service. To include the BART station property in the ACWD service area, BART must submit an application to LAFCO for annexation.

LAFCO is a state mandated local agency that oversees boundary changes to cities and special districts, the formation of new agencies, including incorporation of new cities, and the consolidation of existing agencies. The broad goals of LAFCO are to ensure the orderly formation of local government agencies, to preserve agricultural and open space lands, and to discourage urban sprawl.

DISCUSSION/ANALYSIS: During BART's discussions with LAFCO, it was determined that in addition to the BART station area property, two areas within the City's street right-of-way adjacent to the future station are also not in the ACWD service area. Enclosure A shows the proposed area for annexation. The areas highlighted in red are the City's public right-of-way that is currently not in the ACWD service area. Therefore, LAFCO is asking BART to include those areas in the same annexation application. To include the City's right-of-way in BART's application, the City must also sign the application. From staff's review, there does not appear to be any negative impact on the City to the annexation and it appears to be a reasonable and appropriate change. Therefore, the Council is asked to authorize the City Manager or his designee to sign BART's application to LAFCO.

FISCAL IMPACT: None

ENVIRONMENTAL REVIEW: Environmental review of this action was completed by BART as part of their WSX Project environmental clearance.

ENCLOSURE: [Map of Area Proposed for ACWD Annexation](#)

RECOMMENDATION: Authorize the City Manager or his designee to sign BART's Annexation Application to include two areas of City right-of-way in ACWD's service area as described herein.

***2.7 ALAMEDA COUNTY AREA AGENCY ON AGING CONTRACTS**

Authorize the City Manager to Execute FY 2009/10 Contracts with the Alameda County Area Agency on Aging for Case Management, Family Caregiver Support, the Senior Center and the Multi-Purpose Senior Services Program (MSSP); and Appropriate Additional Funds

Contact Person:

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Executive Summary: The Alameda County Area Agency on Aging (AAA) has awarded the City a total of \$163,565 in FY 2009/10 in support of four Human Services Department (HSD) Aging and Family Services Division (AFS) programs, including \$30,979 for Case Management, \$69,446 for Family Caregiver Support, \$10,000 for the Senior Center, and \$53,140 for the Multi-Purpose Senior Services Program (MSSP). Staff recommends that the Council authorize the City Manager to execute contracts with AAA for these program funds. In anticipation of this funding, the City Council appropriated \$161,458 as part of the FY 2009/10 Adopted Budget. Staff is recommending that the City Council appropriate an additional \$2,107, including \$1,240 to the Older Americans Grant Fund 106 and \$867 to the Area Agency on Aging Grant Fund 173, to match the actual cumulative contract amount of \$163,565.

BACKGROUND: For many years, the Alameda County Area Agency on Aging (AAA) has supported various senior programs provided by the Human Services Department (HSD) Aging and Family Services Division (AFS).

Case Management Program: AFS has received Older American's Act funding to provide case management services to Tri-City residents since 1986. The case management program is designed to help frail seniors find the services they need to live safely in their own homes in spite of failing health and shrinking social support. Case managers serve approximately 1,000 seniors and their families each year. They conduct home visits to determine the needs of seniors and develop plans of care that allow seniors to acquire the support needed to function in a community setting and avoid unnecessary use of emergency services and premature institutionalization. Historically, the City has received \$25,000 - \$30,000 of Older American's Act funding each year to help support this program. Older American Act funding is provided through AAA, which has submitted a contract for the period of July 1, 2009 - June 30, 2010 in the amount of \$30,979.

Family Caregiver Support Program: AAA has also awarded AFS funding through the National Family Caregiver Support Program since it became available in 2002. Families have always been the primary source of care for frail seniors. National data estimates that family and friends are the sole source of assistance for nearly three-quarters of impaired older adults in the community. They are also the preferred source of help for most elders. Caregiving, however, takes a great toll on family members. The personal, social and health impacts of caregiving have been well documented, especially for family

members who are caring for seniors suffering from dementia. The purpose of the National Family Caregiver Support Program is to fund programs that provide support to the caregiver. The City of Fremont Caregiver Program provides a professional assessment of caregiver needs, individual counseling for caregivers, support groups, and educational workshops, all of which are designed to reduce caregiver burden. The program serves approximately 80 caregivers and care receivers each year. The FY 2009/10 AAA contract for the Family Caregiver Support Program is for \$69,446.

Senior Center Program: In 2005, the AAA approved a proposal for \$10,000 a year for four years to provide Older American's Act funding that helps the Senior Center support ethnic programming. These funds are targeted to programs that serve cultural communities. This money helps sustain Senior Center operations. The FY 2009/10 AAA contract for the Senior Center Program is for \$10,000.

MSSP Program: Since 2000, HSD has received funding from the AAA to support the MSSP program, which provides case management and purchased services like respite care, chore services and transportation for frail, Medi-Cal-eligible seniors in Southern Alameda County, in order to prevent placement in a nursing home. Staff is requesting that Council authorize the City Manager to execute the FY 2009/10 AAA contract for the MSSP program in the amount of \$53,140.

DISCUSSION/ANALYSIS: In anticipation of these four contracts, the City Council appropriated \$161,458 in AAA funding as part of the FY 2009/10 Adopted Budget. The actual contract amount was higher than anticipated for three of the four contracts. Staff is recommending that the City Council appropriate an additional \$2,107, including \$1,240 to Fund 106 and \$867 to Fund 173, to match the actual cumulative contract amount of \$163,565. Table 1 details the additional appropriations needed to match the actual cumulative contract amount.

Table 1: AAA Contract Additional Appropriation Needed

Fund	Contract	2009/10 Adopted Budget	Actual Contract Amount	Additional Appropriation Needed
106	Case Management	29,739	30,979	1,240
173	Family Caregiver	68,969	69,446	477
	MSSP	52,750	53,140	390
	Senior Center	10,000	10,000	0
Totals:		\$161,458	\$163,565	\$2,107

FISCAL IMPACT: AAA funding is used to support staffing and other program expenses in the Aging and Family Services Division. The additional appropriation will offset General Fund costs associated with these programs.

ENVIRONMENTAL REVIEW: N/A

ENCLOSURE: None.

RECOMMENDATIONS:

1. Authorize the City Manager or designee to execute contracts with the Alameda County Area Agency on Aging totaling \$163,565, including \$30,979 for Case Management, \$69,446 for Caregiver Support, \$53,140 for the MSSP program, and \$10,000 for the Senior Center.
2. Appropriate \$1,240 to the Older Americans Grant Fund 106 and \$867 to the Area Agency on Aging Grant Fund 173.

***2.8 INTRODUCTION OF CONFORMING AMENDMENTS AND MID-CYCLE CLEANUP TO THE 2007 CALIFORNIA FIRE CODE**

Continued Public Hearing (Published Notice) to Introduce an Ordinance Making Conforming Amendments and Mid-Cycle Cleanup to the 2007 California Fire Code and Adopting by Reference the California State Fire Marshal's Guidelines for the Installation of Solar Arrays

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Executive Summary: The proposed ordinance presents, for the Council's consideration, two changes to the City amendments to the 2007 California Fire Code. These include:

1. Correction of an administrative error that omitted the "B" Occupancy classification from the specific listing of occupancies requiring an Automatic Sprinkler System in section 903, and
2. Adopt by reference the California State Fire Marshal's (SFM) Guidelines for the installation of solar arrays.

The first amendment is primarily administrative in nature, while the adoption of the SFM's Solar Array Installation Guidelines, with its design details, can be considered a more technical amendment.

BACKGROUND: The 2007 adoption of the California Building and Fire Codes was a unique effort in that the entire structure and layout of the model codes changed from the prior years' versions. One of the objectives staff had while performing the review was to try to be clearer and more specific with many of the revisions. Since several new building types and occupancies were added to the 2007 model codes, staff followed the detailed listing of the occupancies in section 903, which states when a fire sprinkler system needs to be installed. While most requirements for Automatic Fire Extinguishing Systems (AFES) were continued from the previous ordinance, with text and structure changes made for clarity, staff inadvertently left out the "B" occupancy category and need to insert the following language into Fremont's Fire Code:

Section 903.2.1 **Group A or B.** An automatic sprinkler system shall be provided throughout buildings or portions thereof used for Group A or B occupancies.

This will achieve the goal of maintaining consistency from one code cycle to another while detailing the occupancy types that require the installation of an automatic fire extinguishing system.

The second change staff proposes is the adoption of the California State Fire Marshal's Solar Voltaic Installation Guideline as a recognized standard in Chapter 45, the Referenced Standards, of the California Fire Code. These would replace the existing Fremont Fire Department Guidelines that were developed shortly after the 2007 Code Adoption Cycle. These newer guidelines were produced by a

State-wide taskforce that included representatives from the solar industry, fire service and Underwriters Laboratories. All recent residential and commercial installations of solar arrays have opted to use these guidelines for the placement and configuration of the panels and their appurtenances, as they clearly recognize a much broader range of installations, are more flexible than the guidelines originally drafted by the Fire Department, and provide a consistent format for solar array installation locally as well as throughout the State.

Resolution of Local Condition Findings: Health and Safety Code Sections 17958, 17958.5 and 17958.7 require the City Council to make findings before adopting local amendments to the State-adopted California Building Standards Code that the amendments are reasonably necessary because of local climatic, geological and topographical conditions. Staff has reviewed the guidelines and found them to be reasonably necessary because of the same local geologic, topographic and meteorological conditions as previously found by the City Council to justify the original amendments to the 2007 California Fire Code.

FISCAL IMPACT: None.

ENVIRONMENTAL REVIEW: The adoption of the ordinance accompanying this report is exempt from the requirements of CEQA under CEQA Guideline section 15061(b)(3) in that the ordinance is not a Project which has the potential for causing a significant effect of the environment.

ENCLOSURES:

- [Draft Ordinance](#)
- [State Fire Marshal's Solar Photovoltaic Installation Guidelines](#)

RECOMMENDATIONS:

1. Hold public hearing.
2. Waive full reading and introduce an ordinance amending the 2007 California Fire Code, as set forth herein and finding the amendments reasonably necessary due to local conditions.
3. Adopt a motion directing staff to prepare a summary of the ordinance and the City Clerk to post and publish the summary in accordance with Government Code Section 36933(c)(1).

5.1 PARTICIPATION IN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM (SCIP) OFFERED BY THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

Hold Public Hearing (Published Notice) and Adopt Resolution Authorizing City of Fremont Participation in the Statewide Community Infrastructure Program (SCIP) for Financing of Development Impact Fees

Contact Person:

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Executive Summary: The City Council is asked to hold a public hearing and adopt a resolution approving the City of Fremont’s participation in the Statewide Community Infrastructure Program (SCIP) offered by the California Statewide Communities Development Authority (CSCDA or California Communities). CSCDA is a California joint powers authority (JPA), of which the City is already a member. SCIP creates a long-term financing alternative, at attractive tax-exempt rates, through which developers can either pre-fund, or obtain reimbursement for, impact fees payable to the City to mitigate the impacts caused by their projects, as well as finance public capital facilities for acquisition by the City. If the City’s offering of the program to developers is approved by the City Council, developer participation in SCIP will be voluntary – developers will remain free to pay the impact fees or construct public capital facilities outright. SCIP imposes no substantial financial or administrative burdens on the City, but it expands financing alternatives for both large and small developers paying project impact fees, and it assures the City of timely and full payment of the impact fees. Having the program available could aid in the City’s economic development efforts, and was recommended as part of the City’s local economic stimulus package, adopted by the City Council in March 2009.

BACKGROUND: CSCDA is a joint powers authority sponsored by the League of California Cities and the California State Association of Counties (CSAC). The member agencies of CSCDA include approximately 337 cities and all 58 counties throughout California, including the City of Fremont. SCIP is a financing program that enables developers to pay most impact fees and finance public improvements, through an acquisition agreement, that qualify under the 1913/1915 Act (excluding school fees) with tax-exempt bond issuance proceeds. SCIP has assisted communities and developers through California in financing over \$135 million in impact fees since 2003.

DISCUSSION/ANALYSIS: Real property developers are required to pay “impact fees” to the City as a prerequisite of receiving their permits to undertake development. These fees mitigate the impacts of new development by providing money for public infrastructure and improvements that are anticipated to arise because of the development activities. Impact fees are used to address a range of impacts and help pay for needed park facilities, public service facilities (e.g., police and fire stations, libraries, etc.), and traffic infrastructure, such as highway interchanges, street improvements, and traffic signals. In certain cases, as a condition of approval, the developer has been required to construct certain public capital facilities, which have then been acquired by the City.

Historically, some developers could not afford to pay the entire amount of impact fees related to otherwise desirable projects up-front. In certain cases, the City allowed the developer to defer the impact fee payment on an installment basis. Such situations are typically handled as they arise and require ongoing administration of the developer's obligation to make the deferred payment installments. Although such situations have not arisen often in the past, staff has identified SCIP as a more favorable alternative for both the City and the property owner/developer.

SCIP was instituted by CSCDA in 2002 to allow owners of property in participating cities and counties to finance the development impact fees that would be payable by property owners upon receiving development entitlements or building permits. The program has since been expanded to include financing of public capital facilities directly. If a property owner chooses to participate, the selected public capital facilities and the development impact fees owed to the City will be financed by the issuance of tax-exempt bonds by CSCDA. CSCDA will impose a special assessment on the owner's property to repay the portion of the bonds issued to finance the fees paid with respect to the property and the public capital facilities benefiting the property. With respect to impact fees, the property owner will either pay the impact fees at the time of permit issuance and then be reimbursed from the SCIP bond proceeds when the SCIP bonds are issued, or the fees will be prepaid to the City from the proceeds of the SCIP bonds. In this way, the City is never at risk for the receipt of the impact fees.

The benefits to the property owner include the following:

- Only property owners who choose to participate in the program will have assessments imposed on their property.
- Instead of paying cash for public capital facilities and/or development impact fees, the property owner receives low-cost, long-term tax-exempt financing of those fees, thus freeing up capital for other purposes.
- The property owner can choose to pay off the special assessments at any time.
- Owners of smaller projects can have access to tax-exempt financing of infrastructure. Before the inception of SCIP, only projects large enough to justify the formation of an assessment or community facilities district had access to tax-exempt financing.

The benefits to the City include the following:

- As in conventional assessment financing, the City is not liable to repay either the bonds issued by CSCDA or the assessments imposed on the participating properties.
- CSCDA handles all district formation, district administration, bond issuance and bond administration functions. A participating city can provide tax-exempt financing to property owners through SCIP while committing virtually no staff time to administer the program.
- Providing tax-exempt financing helps participating cities and counties cushion the impact of public capital facilities construction costs and development impact fees on property owners.
- The availability of financing could encourage developers to pull permits and pay fees in larger blocks, thus giving the City access to revenues for public infrastructure, rather than receiving a trickle of revenues stretched out over time. As part of the entitlement negotiation process, the possibility of tax-exempt financing of fees could be used to encourage a developer to pay fees up front.

- In some cases, the special assessments on successful projects can be refinanced through refunding bonds. Savings achieved through refinancing will be directed back to the City for use on public infrastructure, subject to applicable federal tax limitations.

As more California cities offer SCIP as a financing alternative, sophisticated developers can be expected to seek out the availability of the SCIP alternative because of its favorable term structure and interest rates. CSCDA fully administers the SCIP program and takes charge of issuing all the long-term debt obligations used to provide developer financing. SCIP could allow the City to reduce or eliminate the need for deferral arrangements and may also serve as an economic development enhancement.

In order for the City to participate in SCIP, the City Council must adopt a resolution authorizing participation. This resolution authorizes CSCDA to process applications related to the City's impact fees and sets the necessary tax and State law compliance framework for CSCDA's administration of the program for Fremont developers. If approved, CSCDA handles administration of SCIP beginning with the developer's application processing (the City need only make the developer aware of the SCIP option), to the sale of the tax exempt bonds (not City bonds), through disbursement of proceeds to the City for payment of impact fees.

The SCIP Program can be structured to be available for all development (both residential and non-residential), or for just non-residential property. Fremont has a long history of providing special assessment financing for public improvements through "local improvement districts" (LIDs) or "community facilities districts" (CFDs) for non-residential property. Similarly, Fremont has a long history of not imposing special assessment obligations for public improvements on residential property. Commercial/industrial developers tend to be single owners and/or owners with a long-term relationship with the property, and are more likely to be the ultimate payers of the assessments. In contrast, residential developers tend to build houses that are then sold to individual buyers, who may be unaware of the existence of the assessment. In addition, if this program were made available to residential development, some homeowners would be subject to an additional property tax burden (the special assessment) that most homeowners in Fremont do not have. For these reasons, staff recommends that only non-residential development be able to apply for access to SCIP, consistent with the City's past practice of only forming LIDs and CFDs for non-residential property.

The proposed resolution authorizes CSCDA to accept applications from owners of non-residential property within Fremont's planning jurisdiction to apply for tax-exempt financing of public capital facilities and development impact fees through SCIP. It also authorizes CSCDA to form assessment districts within the City's boundaries, conduct assessment proceedings, and levy assessments against the property of participating owners. It approves the form of an Acquisition Agreement, attached to the resolution as Exhibit B, to be entered into between the City and the participating property owner/developer, if applicable, to provide the terms and conditions under which financing for public capital facilities will be provided and to establish the procedure for disbursement of bond proceeds to pay for completed facilities. It also authorizes miscellaneous related actions and makes certain findings and determinations required by law.

Attached to the resolution as Exhibit A is a "Form of Resolution of Intention to be Adopted by CSCDA" if Council acts to authorize the City's participation. Exhibit A to the resolution is for informational purposes and does not require action by the Council.

FISCAL IMPACT: Participation in SCIP results in no adverse fiscal impact to the City, and the need for staff involvement is minimal. There could be some positive impact because providing a tax-exempt financing option could encourage development to occur sooner than might otherwise be the case.

ENVIRONMENTAL REVIEW: None required.

ENCLOSURE: [Proposed resolution authorizing the City of Fremont to join SCIP and to become a participating agency in this program, and granting certain administrative authorizations to CSCDA.](#)

RECOMMENDATION:

1. Hold a public hearing.
2. Adopt a resolution authorizing the City of Fremont's participation in the Statewide Community Infrastructure Program (SCIP) offered by the California Statewide Communities Development Authority (CSCDA).

6.1 Report Out from Closed Session of Any Final Action

6.2 ORDINANCE REGARDING SMOKING IN OUTDOOR DINING AREAS

Introduce an Ordinance Amending Fremont Municipal Code Title IV, Chapter 6 Regarding Smoking in Outdoor Dining Areas

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Executive Summary: On July 28, 2009, the City Council considered a referral from the Human Relations Commission, as requested by the Tri-City Health Center, proposing to amend the Fremont Municipal Code with respect to the prohibition on smoking in outdoor dining areas. The Council directed staff to return with an ordinance amending Fremont Municipal Code Title IV, Chapter 6, Sections 4-6100 et seq. (Smoking Ordinance) to eliminate the option of restaurants designating up to one-half of an outdoor dining area as a smoking area. The attached draft ordinance accomplishes this purpose and clarifies that the prohibition on smoking extends to all outdoor dining areas used by restaurant patrons.

BACKGROUND: Title IV, Chapter 6, Section 4-6104 of the Fremont Municipal Code (FMC) currently prohibits smoking in a variety of public areas, including restaurants and their outdoor dining areas. However, under this section restaurants may designate up to one-half of a contiguous area in an outdoor dining area as a smoking area. In February and March 2009, the Tri-City Health Center approached the Human Relations Commission (HRC) about amending the Fremont Municipal Code with regard to prohibiting smoking in outdoor dining areas. At the request of the HRC, the Tri-City Health Center conducted outreach to the Fremont Chamber of Commerce, which endorsed the proposal. On June 15, 2009, the HRC voted to refer the proposal to the City Council to amend the Smoking Ordinance, and as stated above, on July 28, 2009, the City Council directed staff to return with an implementing ordinance.

DISCUSSION/ANALYSIS: Under Article XI, Section 7 of the California Constitution, cities are empowered to enact ordinances and regulations to protect the public health and welfare that are not in conflict with State law. California Health and Safety Code Section 118910 expressly permits cities to regulate smoking that is not inconsistent with other state laws. Based on this regulatory authority, many cities have enacted ordinances prohibiting smoking in a variety of public places.

This proposed ordinance would eliminate the option of restaurants designating up to one-half of an outdoor dining area as a smoking area. In addition, the ordinance broadens the definition of “dining area” to mean “any area available to or customarily used by restaurant patrons containing counters, benches or tables that are designed, established or regularly used for consuming food or beverages.” In this way, outdoor dining areas that are part of a shopping center but not necessarily attached to a particular restaurant would become non-smoking areas. Under the existing ordinance, the term “restaurant” includes coffee shops, cafeterias and other eating establishments.

Enforcement: As noted in the July 28, 2009 staff report, as well as at the City Council meeting itself, staffing is very limited for enforcement of the existing ordinance and the proposed amendment. Instead, it is expected that enforcement would continue to be complaint-driven and self-enforcing through the establishment of signage noting where smoking is prohibited.

FISCAL IMPACT: If the proposed ordinance is adopted, there may be costs associated with outreach to local businesses. The Tri-City Health Center has offered to assist with this effort and may also pay a portion of the cost of producing signs that could be used by local businesses for posting in areas where smoking would now be prohibited.

ENVIRONMENTAL REVIEW: This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) under California Code of Regulations Title 14, Section 15061 (b)(3), in that it is not a Project which has the potential for causing a significant effect on the environment.

ENCLOSURE: [Draft ordinance](#)

RECOMMENDATION: Introduce an ordinance amending Fremont Municipal Code Title IV, Chapter 6, Sections 4-6102 and 4-6104 regarding smoking in outdoor dining areas.

7.1 AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING UPDATE

Update on Funding Received in Fremont Under the American Recovery and Reinvestment Act of 2009

Contact Person:

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Executive Summary: On February 17, 2009, President Obama signed the \$787 billion American Recovery and Reinvestment Act (ARRA) of 2009 into law. The American Recovery and Reinvestment Act of 2009 is also commonly known as the Federal Stimulus Package. The main objectives of the Federal Stimulus Package are to create jobs and stabilize the economy.

ARRA funding is targeted to programs in the areas of health care, energy, infrastructure, education, public safety, transportation, environment, affordable housing, and economic development. In many cases, funding has begun to be awarded. Staff is actively tracking the status of ARRA funding opportunities and is pursuing funding for City of Fremont projects and programs as directed by Council.

This report provides a follow up to the initial assessment of ARRA funding for which the City of Fremont was eligible, as well as an update on ARRA funding awarded to projects or businesses in Fremont. In some cases, funding was available by formula, and in other cases funding was available through a competitive process.

At this time, Fremont may be eligible for \$11.7 million dollars in funding. To date the City has received \$7.5 million dollars, the largest portion of which is \$5.9 million in new funding for street overlays. Other significant funding received includes additional CDBG funds (\$446,295), which may be used for capital needs and social services; funding for homelessness prevention (\$785,819); funding for police equipment (\$260,725); and funding for Temporary Aid to Needy Families (\$125,000).

As a part of the initial assessment that went to Council on March 24, 2009, there were several grants for which the City was either 1) deemed not eligible after review of the program guidelines or 2) not funded. Of particular note, the City was not successful in obtaining \$1.2 million in COPS funding requested for eight police officers. Funding for this program was awarded on a competitive basis and was focused on cities with higher crime rates than Fremont.

BACKGROUND: President Barack Obama signed the American Recovery and Reinvestment Act (ARRA) of 2009 into law on February 17, 2009. The American Recovery and Reinvestment Act of 2009, or Federal Stimulus Package, is intended to create jobs and stabilize the economy.

The total cost of the Federal Stimulus Package is \$787 billion, of which approximately \$355 billion is for transportation, infrastructure, construction, health care programs, education and housing assistance,

and energy efficiency projects, \$144 billion for state and local fiscal relief, and \$288 billion for personal and business tax credits.

The ARRA includes extensive accountability and transparency requirements, including quarterly reporting, review and vetting requirements, local website information posting, and registration with appropriate federal contracting database. To date, the City is and has been in full compliance with all provisions of the ARRA. For example, all of the City's Recovery Act funding updates are posted to the City's website regularly at www.fremont.gov/recovery. City staff coordinated internally to insure that quarterly reports are registered with the federal reporting website. Additionally, staff has approached Council on an individual project basis to receive authorization to apply for ARRA grants.

The first round of quarterly reporting was due to the federal government by October 10, 2009. The data compiled from those reports will be uploaded to www.recovery.gov between October 12 and October 30. All City projects are in compliance with the reporting requirements.

The chart below shows a comprehensive list of ARRA funding for which the City was eligible and applied. In some cases, noted in italics, funding was applied for through other agencies. There are cases when Fremont has applied for or submitted projects for funding, but has not received approval of those projects.

Funding Source	Fremont Share or Application	Projects	Award Received	Council Approval
Community Development Block Grant Recovery (CDBG-R)	\$446,295	Family Resource Center Sub-Roof Replacement Project - \$192,336; FRC Parking Lot Reconstruction and ADA Compliance - \$142,386; Public Service Projects - \$66,944; and CDBG-R Administration - \$44,629	Yes	May 19, 2009
Phase 2 of the Neighborhood Stabilization Program (NSP2)	TBD ¹	Cities in the County and Alameda County Community Development Department have entered into a Consortium Agreement to pool resources in applying to HUD for funding, with Alameda County as the lead agency. The purpose of the NSP	Funding award is scheduled to be announced in November 2009.	July 7, 2009

¹ Depending on the availability and affordability of foreclosed properties in Fremont, there may be a possibility that a NSP project takes place outside of Fremont. NSP 2 funds may support one or more regional projects by combining the funds within the consortium in order to serve residents from multiple jurisdictions. This would allow the City to continue to play a leadership role and to work collaboratively with other organizations to maintain and expand the range of housing alternatives in Fremont and the Bay Area. This is consistent with the City's Housing Goals and Policies.

Regardless of where the project(s) will reside, the NSP program will benefit Alameda County individuals and families whose incomes do not exceed 120% of area median income by undertaking one or more eligible activities as previously described.

Funding Source	Fremont Share or Application	Projects	Award Received	Council Approval
		2 funding is to rejuvenate neighborhoods and communities that are hardest hit by the foreclosure crisis. The Consortium applied for \$11 million in funding.		
Homeless Prevention and Rapid Re-housing Program (HPRP)	\$682,331	Provide HPRP services to City of Fremont residents. Includes \$53,242 with the County to provide outreach and marketing services through the EveryOne Home program. Also includes \$246,000 for Abode Services to provide rapid re-housing services to Fremont residents.	Yes	May 12, 2009 & September 1, 2009
Homeless Prevention and Rapid Re-housing Program (HPRP) – <i>Alameda County Community Development Agency</i>	\$103,488	Provide HPRP services to City of Newark residents (through the FRC), including \$48,000 for Abode Services to provide rapid re-housing services to Newark residents.	Yes	September 1, 2009
TANF Emergency Contingency Funds for Non-Recurrent, Short Term Benefits – <i>Alameda County Social Service Agency</i>	\$125,000	Provide eligible CalWORKS recipients with up to 4 months of Temporary Assistance for Needy Families (TANF) Emergency Contingency Funds for Non-Recurrent, Short Term Benefits; and. This CalWORKS funding will be leveraged with HPRP funding.	Yes	September 1, 2009
Highway Infrastructure – <i>Caltrans</i>	\$5,907,000	2009 Citywide Asphalt Overlay Project, City Project No. PWC (8234-H). Street overlays of 2.3 miles on portions of Paseo Padre Parkway, Walnut Avenue, Mowry Avenue, Argonaut Way and South Grimmer Boulevard.	Yes	April 7, 2009
Highway Infrastructure – <i>CalTrans</i>	\$770,000	Pavement rehabilitation work on Osgood Road.	Staff is working with Alameda County Congestion Management Agency (CMA)	If funding is approved, will schedule for Council appropriation.

Funding Source	Fremont Share or Application	Projects	Award Received	Council Approval
			to utilize these funds that were initially programmed to the Citywide Asphalt Overlay Project.	
Community Oriented Policing Services (COPS)	\$0	Applied for \$1,242,832 to fund eight Police Officers.	Funding not awarded	N/A
Byrne Justice Assistance Grant (JAG)	\$260,725	Purchase of digital citation program hardware and software; license plate scanning equipment; neighborhood notification system; and replacement of speed/message trailer.	Yes	March 24, 2009
Assistance to Firefighters Grants	\$1,500,000	Construction of two storage buildings at Fire Station 6 and Fire Station 11; previously planned but deleted due to cost.	Application submitted. AFG awards are announced and processed on a rolling basis between October 15 and December 31, 2009.	March 24, 2009
Energy Efficiency and Conservation Block Grants	\$1,891,200	Alameda County Library Zero Net Energy Project; City Efficiency Retrofits; LED Streetlight/Parking Lot Light Pilot; LED Pedestrian Signals; City Hybrid Vehicle Fund; Green Zoning Ordinance; California Youth Energy Services; and Community Grants.	Department of Energy has awarded funding to some cities, but Fremont's application is still awaiting review.	June 9, 2009
Total:	\$11,686,039			

As a part of the initial assessment that went to Council on March 24, 2009, there were some grants for which the City was either 1) deemed not eligible after review of the program guidelines or 2) not funded. There were also some sources of Recovery Act funding for which the City may have been eligible, but did not apply. Each department evaluated each funding source and made decisions to recommend applying when the proposed services and programs fit within City and department goals and staff capacity.

One example is the Broadband Technology Opportunities Program, an ARRA program for which funding criteria were set after staff's March 2009 report to Council. The Broadband Technology Opportunities Program primarily provides funding for projects that will provide broadband to "underserved" and "unserved" rural populations. The City did not meet this criteria. Also, funding approval favors regional projects and ones that are in the planning stages, but not implemented, due to lack of funding. The City is not participating in projects of this nature. As a result, staff did not recommend competing for this funding source.

In another case, the City applied for Brownfields funding for remediation of the former Union Pacific property in Niles through the Environmental Protection Agency's (EPA) normal grant cycle in November 2008, before the Recovery Act was approved, and was not funded. Once the Recovery Act was approved in March 2009, the EPA used Recovery Act funding to fund more applications from its normal grant cycle than originally planned. The City was not funded in the second round.

ARRA Funding Provided to Other Entities in Fremont

Fremont Unified School District - The Fremont Unified School District applied for about \$20 million in ARRA funding for enhancement of intervention programs; services for homeless students; supplemental services to children with disabilities; assistive technology equipment; data monitoring systems; technology based assessments, professional development for teachers; student equipment, materials, textbooks, and supplemental materials; and capital projects. FUSD expended \$8.3 million in FY 2008/09 and expects to receive another \$12.1 million in FY 2009/10.

Economic Development Grants - In addition to the City applying directly for ARRA funds, there are a number of grant and loan opportunities available to businesses. Funding opportunities for businesses include \$636 million for Small Business Administration (SBA) loan programs, which includes \$30 million for expanding SBA's Microloan program. There are also SBA loans for up to \$35,000 for small businesses facing economic hardship.

Several Fremont business received Small Business loans as part to the ARRA funding package. The most prominent business assistance package was given to Fremont business Solyndra, which received a \$535 million federal loan guarantee by the U.S. Department of Energy (DOE) to build a second solar panel manufacturing plant in Fremont.

Laguna Creek Watershed - The U.S. Army Corps of Engineers awarded the San Francisco branch of Towill, Inc, a surveying and mapping firm, a \$545,000 (Fremont portion valued at about \$13,625) ARRA contract to conduct a study on the Laguna Creek Watershed. The study is one of 40 projects and will evaluate potential flood damage reduction alternatives.

FISCAL IMPACT: In most cases, ARRA funding cannot supplant existing sources of funding and is intended to supplement and enhance existing funding. However, up to ten percent of project awards are allowed to be used for administration and implementation, which may be used to pay staff salaries and necessary materials and supplies.

The fiscal impact is significant as it allows the City to provide services and complete capital projects that would not otherwise be funded.

ENVIRONMENTAL REVIEW: Environmental reviews have been addressed with each report seeking Council approval to apply for ARRA funding.

ENCLOSURE: None.

RECOMMENDATION: Receive report on the American Recovery and Reinvestment Act of 2009.

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC.....	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
November 3, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 9, 2009	4:00 p.m.	Joint City Council/FUSD Board Meeting	Council Chambers	Live
November 10, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 17, 2009	TBD	Work Session	Council Chambers	Live
November 17, 2009	7:00 p.m.	Regular City Council Meeting	Council Chambers	Live
November 24, 2009		Cancelled		
December 1, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 8, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 15, 2009	TBD	Work Session	Council Chambers	Live
December 15, 2009	7:00 p.m.	Regular City Council Meeting	Council Chambers	Live
December 16, 2009 – January 11, 2010		Council Recess		
January 5, 2010		Cancelled		
January 12, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
January 19, 2010	TBD	Work Session	Council Chambers	Live
January 26, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 2, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 9, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 16, 2010	TBD	Work Session	Council Chambers	Live
February 23, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live